



4310-MR

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

30 CFR Part 583

RIN 1010-AD90

[Docket ID: BOEM-2010-0041]

Negotiated Noncompetitive Leasing for the Use of Sand, Gravel, and Shell Resources on the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Proposed rule.

SUMMARY: This rule proposes regulations to address the use of Outer Continental Shelf (OCS) sand, gravel and shell resources for shore protection, beach restoration, or coastal wetlands restoration projects by Federal, State, or local government agencies, or use in construction projects authorized by or funded in whole or in part by the Federal Government. The proposed rule describes the negotiated noncompetitive agreement process for qualifying projects and codifies new and existing procedures.

DATES: Submit comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Bureau of Ocean Energy Management (BOEM) may not fully consider comments received after this date. Submit comments to the Office of Management and Budget (OMB) on the information collection (IC) burden in this proposed rule by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This does not affect the deadline for the public to comment to BOEM on the proposed regulation.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD90 as an identifier in your comment. Please reference “Outer Continental Shelf Marine Sand, Gravel and Shell Resources, 1010–AD90” in your comments and include your name and return address.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Under the tab “More Search Options,” click “Advanced Docket Search,” then select “Bureau of Ocean Energy Management” from the agency drop-down menu, then click the submit button. In the Docket ID column, select BOEM-2010-0041 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s “User Tips” link. BOEM will post comments on www.regulations.gov.
- Mail or hand-carry comments to the U.S. Department of the Interior; Bureau of Ocean Energy Management; Attn: Office of Policy, Regulation and Analysis, 45600 Woodland Road, VAM-BOEM DIR, Sterling, Virginia 20166.
- Send comments on the IC in this proposed rule to: Interior Desk Officer 1010–AD90, Office of Management and Budget; 202-395-5806 (fax); email: OIRA_Submission@omb.eop.gov. Please also send a copy to BOEM, Office of Policy, Regulation and Analysis at 45600 Woodland Road, Sterling, VA 20166.

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly

available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: For comments or questions, contact Loren Thompson, Office of Policy, Regulation and Analysis, at Loren.Thompson@boem.gov, or at (202) 208-5890. To see a copy of the IC request submitted to OMB, go to

<http://www.reginfo.gov> (select Information Collection Review, Currently Under Review). You may also obtain a copy of the supporting statement for the new collection of information by contacting BOEM, Office of Policy, Regulation and Analysis at 45600 Woodland Rd., Sterling, VA 20166.

SUPPLEMENTARY INFORMATION:

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I. Background

Congress amended the Outer Continental Shelf Lands Act, 43 U.S.C. 1331-1356 (OCSLA, or the Act), in 1994 to authorize the Secretary of the Interior to negotiate noncompetitive agreements with any person for the use of OCS sand, gravel and shell resources in a program of or project for shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State or local government agency, or in a construction project either authorized or funded in whole or in part by the Federal Government. See 43 U.S.C. 1337(k)(2). The Secretary may assess a fee based on an assessment of the value of the resources and the public interest served by promoting development of the resources. No fee shall be assessed directly or indirectly against a Federal, State, or local government agency. See 43 U.S.C. 1337(k)(2)(B).

A. Program Description

Generally, shore protection and beach and coastal wetlands restoration projects are initiated to rebuild eroding shoreline segments, such as beaches and dunes, barrier islands, and wetlands. In sensitive wetland areas, these projects are intended to forestall further erosion, restore habitat and/or to provide protection from hurricanes, storms, and coastal erosion. These projects are typically accomplished by placing sand directly on the beach, in open water areas that are the former location of an eroded beach, and/or within breaches in the shoreline that compromise integrity of the beach or barrier island system to form, and subsequently maintain, a beach. Material may also be placed updrift from the beach, allowing longshore processes to redistribute the sand, gravel and shell resources along the beach.

The Act authorizes BOEM to enter into a negotiated agreement when the use of OCS sand, gravel and shell resources is authorized for qualifying projects. This negotiated agreement will take the form of a lease or a Memorandum of Agreement (MOA), depending on the identity of

the applicant(s) requesting use of OCS sand, gravel and shell resources. If a non-Federal entity requests the use of OCS sand, gravel and shell resources, the negotiated agreement required by the Act would generally take the form of a lease. If a Federal agency requests the use of OCS sand, gravel and shell resources, BOEM and the Federal agency, as well as their Federal, State or local government agency counterparts on the project, would enter into a MOA. For example, when a Federal agency partially or wholly funds a non-Federal entity to conduct a project that is otherwise eligible for OCS sand, gravel and shell resources, the negotiated agreement may take the form of a three-party MOA. As warranted, the Federal applicant(s) and BOEM would designate a lead agency and enter into a cooperating agency agreement for the environmental analysis and review. Likewise, if a non-Federal applicant is involved, BOEM would ensure that appropriate environmental analysis and review is completed. The negotiated agreement in each of these situations would describe the project and procedures that would be followed and identify environmental and administrative requirements that must be met.

B. Program History

BOEM and its predecessor agencies, the Minerals Management Service and the Bureau of Ocean Energy Management, Regulation and Enforcement, through the Marine Minerals Program, have been exercising statutory authority regarding OCS sand, gravel and shell resources under the Act pursuant to written guidelines, without the benefit of implementing regulations. Nearly fifty agreements have been negotiated, providing for the use of more than 100 million cubic yards of OCS sand, gravel and shell resources for shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State or local government agency, and for Federally authorized or funded construction projects. BOEM believes that the

promulgation of regulations at this time is advisable in order to provide additional clarity and certainty and to help ensure continuity of the Marine Minerals Program.

II. Section by Section Analysis of the Proposed Rule

Subpart A - General

Section 583.100 What is BOEM's authority for information collection (IC)?

This section would explain BOEM's authority for IC activities related to this proposed part 583. It would explain the reasons the information is being collected and establish the OMB approval of the collection.

Section 583.101 What is the purpose of this rule and to whom does it apply?

This section would explain that the purpose of this proposed rule is to refine and formally adopt procedures for entering into negotiated noncompetitive agreements for the use of OCS sand, gravel and shell resources for shore protection, beach or wetlands restoration by a Federal, State or local government agency or for construction projects authorized or funded, in whole or in part, by the Federal Government. This section would explain that the rule would apply exclusively to negotiated noncompetitive use of sand, gravel and shell resources in the OCS and would not apply to competitive leasing of minerals, including oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands" as defined in section 103 of the Federal Land Policy and Management Act of 1976, as amended (FLPMA). (43 U.S.C. 1701 *et seq.*)

Section 583.102 What is BOEM's authority for this rule?

This section would explain that in proposing these regulations, BOEM is operating under authority granted to the Secretary of the Interior by the Act.

Section 583.103 What definitions do I need to know?

This section would define many of the terms commonly used in the Marine Minerals Program and now used in the proposed regulation, including “borrow area,” “placement area,” and “project.” This section would also define new terms for purposes of this subpart, including “Act,” “agreement,” “amendment,” “BOEM,” “Director,” “Federal agency,” “local government,” “modification,” “outer continental shelf,” “program,” “Regional Director,” and “Secretary.”

Section 583.104 Who is qualified for a project?

This section would explain who is qualified to enter into an agreement with BOEM for the use of OCS sand, gravel, and shell resources, and would explain the requirements to comply with the relevant debarment regulations.

Section 583.105 How do I appeal an unfavorable decision by BOEM?

This section would set out the kinds of decisions that would be subject to reconsideration or appeal, and the process that would be utilized by an unsuccessful applicant or adversely affected party for resolution of such reconsideration or appeal.

Section 583.106 What are the minimum contents of an agreement to use OCS sand, gravel and shell resources?

This section would explain who would be allowed to use OCS sand, gravel and shell resources, and would explain that use authorizations would be in the form of agreements that are negotiated on a case-by-case basis. It would also explain that the agreements would identify the location, type and volume of OCS sand, gravel and shell resources allowed to be used under the agreement. In addition, it would explain that any authorizations to use sand, gravel and shell resources would not be exclusive.

Subpart B – Reserved

Subpart C – Outer Continental Shelf Sand, Gravel and Shell Resources Negotiated Agreements

Section 583.300 How do I submit a request for an agreement?

This section would explain who may submit a request to BOEM to obtain an agreement for the use of OCS sand, gravel, and shell resources. It would list the information the request must include, such as a detailed description of the proposed project and how it qualifies as a project eligible under the Act to receive OCS sand, gravel and shell resources pursuant to a negotiated noncompetitive agreement; a description of borrow and placement areas; certain maps and data; a description of the environmental evaluations that have been completed or are being prepared that cover the project, including both onshore and offshore components; a target date or date range when the resources will be needed; a description of the Federal, State, or local agencies that are undertaking the project and points of contact; and a statement explaining who authorized the project and how the project will be funded.

Section 583.301 How will BOEM determine if a project qualifies?

This section would lay out the factors that BOEM would use to determine whether a project qualifies for use of sand, gravel and shell resources under a negotiated noncompetitive agreement. The section would enumerate the evaluation criteria, including: the project purpose; other uses of OCS sand, gravel and shell resources authorized from the same borrow area; the project funding source(s) and amounts; the proposed design and feasibility of the project; any potential environmental and safety risks associated with the project; other Federal interests located near or within the specified borrow area; comments received from potentially affected governments; the applicant's background and experience working on similar projects or activities; and whether the project is consistent with applicable statutes and their implementing regulations, which may include, but are not limited to, the Marine Mammal Protection Act

(MMPA) (16 U.S.C. 1361 *et seq.*), the Marine Debris Research, Prevention, and Reduction Act (MDRPRA) (33 U.S.C. 1951 *et seq.*), the Marine Plastic Pollution Research and Control Act (MPPRCA) (33 U.S.C. 1901 *et seq.*), the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1381 *et seq.*), and the International Convention for the Prevention of Pollution from Ships (MARPOL), MARPOL-Annex V Treaty.

Section 583.302 What process does BOEM use to technically and environmentally evaluate a qualified project?

This section would explain the process that BOEM would follow to evaluate a project that qualifies for the use of OCS sand, gravel and shell resources to decide whether to enter into a negotiated noncompetitive agreement. It states that BOEM would coordinate with relevant Federal agencies, States, and local governments, and potentially affected Federally recognized Indian Tribes. It also describes how BOEM would evaluate the project and additional information provided under §§ 583.300 and 583.301 to determine if the information is sufficient to conduct necessary technical and environmental reviews to comply with the requirements of applicable statutes and regulations, which may include, but are but not limited to, the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), the MMPA (16 U.S.C. 1361 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 U.S.C. 1801 *et seq.*), the National Historic Preservation Act (NHPA) (16 U.S.C. 470 *et seq.*), and the Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 *et seq.*). Finally, this section would provide that BOEM would not enter into a negotiated noncompetitive agreement until the information requested for the evaluation has been provided and BOEM has evaluated it.

Section 583.303 What is the process for negotiating and executing an agreement?

This section would describe the steps BOEM would take once it has completed its technical, environmental and other evaluations. This section would provide further that, once BOEM has completed its review of an application, BOEM would decide whether to enter into an agreement. This section would provide further that BOEM would negotiate the terms of the agreement and prepare a draft agreement for the applicant's review and comment. The section would also provide that, after BOEM considers the applicant's comments and suggestions, it would finalize the agreement for signature. This section would provide that, once the applicant signs the agreement, BOEM would execute the agreement and distribute it to the parties to the agreement. Finally, this section would describe the process BOEM would use when an application is not approved.

Section 583.304 What kinds of information must be included in an agreement?

This section would describe the minimum information that an agreement would be required to include, such as an agreement number assigned by BOEM; the purpose of, and authorities for, the agreement; designated and delineated borrow area(s); the project description, including the timeframe within which the project is to be started and completed; the terms and conditions of the agreement, including any reporting requirements; all obligations of the parties; and the signatures of appropriate individuals authorized to bind the applicant and BOEM.

Section 583.305 What is the effective date of an agreement?

This section would describe what determines the effective date of the agreement.

Section 583.306 How will BOEM enforce the agreement?

This section would describe how BOEM would enforce the terms of an agreement and the consequences, including termination, for failure to comply with any applicable law or with the agreement terms. This section would also provide that the failure to comply in a timely and

satisfactory manner with any provision, term or condition of the agreement may delay or prevent BOEM's approval of future requests for use of OCS sand, gravel and shell resources on the part of the parties to the agreement.

Section 583.307 What is the term of the agreement?

This section would explain when an agreement would terminate, either by a specified date, when parties to the agreement notify BOEM that sufficient resources have been removed to complete the project, or for other reasons specified in this section. This section would also explain that, absent extraordinary circumstances, no agreement would have an initial term that is longer than five years from its effective date. Examples of extraordinary circumstances where an initial term longer than five years may be appropriate would include a program of multiple individual projects to be carried out over multiple seasons or where the Congressional authorization for a project called for multiple phases. It would be within BOEM's sole discretion to determine when extraordinary circumstances warrant an initial term longer than five years. The parties would have the option to request an extension, modification or change to the terms of the agreement, as set forth in §583.309.

Section 583. 308 What debarment or suspension obligations apply to transactions and contracts related to a project?

This section would explain that the applicant has the obligation to ensure that all contracts and transactions related to an agreement issued under this part comply with the suspension and debarment regulations at 2 CFR part 180 and 2 CFR part 1400.

Section 583.309 What is the process for modifying the agreement?

This section would explain how an applicant may seek to extend, modify or change an agreement and would spell out the time frames when this might be accomplished. It would

provide that BOEM is under no obligation to extend, modify or change an agreement and cannot be held liable for the consequences of the expiration of an agreement. If BOEM approves a modification, BOEM would prepare an amendment to the agreement and provide it for review by the parties to the agreement prior to execution of the amendment. Should BOEM deny the request, BOEM would notify the parties to the agreement and reconsideration could be requested of the Director.

Section 583.310 When can the agreement be terminated?

This section would explain under what circumstances the Director could terminate an agreement. The termination factors include fraud; noncompliance with the agreement; national security or defense reasons; situations in which continuing with the agreement would cause serious harm or damage to natural resources, property, the environment or historical structures; and other reasons described in this section. This section would also explain the process for terminations and suspensions.

III. Legal and Regulatory Analysis

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866).

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA), a part of the OMB, will review all significant rules. OIRA has determined that this rule is not significant.

(1) This proposed rule contains virtually the same reporting and recordkeeping requirements as those in the current uncodified guidelines and procedures. A regulatory impact analysis is not required. This proposed rule formalizes existing policies and procedures that govern the use of OCS sand, gravel and shell resources. The existing policies, procedures, consultations and monitoring requirements for the noncompetitive use of OCS sand, gravel and shell resources are longstanding and have remained relatively consistent for two decades. This proposed rule does not materially change the existing requirements for the use of OCS sand, gravel and shell resources through leases or MOAs for shore protection, beach or wetlands restoration by a Federal, State or local government agency, or for construction projects authorized or funded, in whole or in part, by the Federal Government. The regulatory baseline is essentially the same as the proposed rule. BOEM believes that any changes between the current BOEM process and this proposed rule are immaterial and would not impose additional compliance obligations or costs upon the regulated entities.

Formalizing the existing conveyance process will provide certainty to the public entities requesting noncompetitive leases or MOAs for OCS sand, gravel and shell resources. BOEM believes there is a benefit to the regulated entities in the form of regulatory certainty when Federal, State and local government agencies desire to use OCS sand, gravel and shell resources for qualifying projects. Entities affected by this rulemaking have the opportunity to comment

through the rulemaking process on the proposed provisions, which are consistent with current practices for the conveyance of sand, gravel and shell resources.

(2) This proposed rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. It reflects the existing process developed over the life of the program in cooperation with other Federal agencies, including the U. S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS) and U.S. Army Corps of Engineers, and State and local governments.

(3) This proposed rule does not have an annual effect on the economy of \$100 million or more. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities.

(4) This rule does not alter the budgetary effects of existing entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(5) This rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Improving Regulation and Regulatory Review (E.O. 13563)

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, reduce uncertainty, and use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. BOEM has developed this rule in a

manner consistent with these requirements.

Regulatory Flexibility Act (RFA)

BOEM certifies this proposed rule would not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. §§ 601 *et seq.*). A Regulatory Flexibility Analysis is not required. Small public entities affected by this rulemaking may be cities, counties, towns, townships, villages or special districts, with a population of less than 50,000. Small entities are occasionally parties to an agreement for the use of OCS sand, gravel and shell resources. Over the last two decades, BOEM has issued nearly 50 leases or MOAs with 22 parties, of which 5 were small public entities. Four out of the 5 small public entities received significant Federal cost-shares to conduct beach nourishment projects. The proposed application and monitoring requirements are necessary to comply with Federal law and provide BOEM and the public the best information on the changes in the sand borrow areas. Since BOEM is not proposing any material changes to the longstanding requirements for borrowing OCS sand, gravel and shell resources, this rulemaking will not have a substantial effect on small entities.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of BOEM enforcement activities, you may call 1-888-734-3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act (SBREFA),

This proposed rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This proposed rule:

- (a) Would not have an annual effect on the economy of \$100 million or more;
- (b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and,
- (c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. A statement containing the information required by Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule would not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would not substantially and directly affect the relationship between the Federal and State and local governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule would comply with the requirements of E.O. 12988. Specifically, this rule would:

- (a) Meet the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and,
- (b) Meet the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes (E.O. 13175)

The U.S. Department of the Interior (DOI) strives to strengthen its government-to-government relationship with Indian tribes through a commitment to consultation with Indian tribes and recognition of their right to self governance and tribal sovereignty. BOEM's Tribal Liaison Officer has certified that this regulation does not have tribal implications as defined in section 1(a) of E.O. 13175 and has determined that the regulation does not have substantial and direct effects on Federally recognized tribes or any Alaska Native Corporation established pursuant to the Alaska Native Claims Settlement Act (ANCSA), 43 U.S.C.1601 *et seq.*

As it relates to any Federally recognized Indian tribe, this proposed rule merely formalizes existing policies and procedures that govern the use of OCS sand, gravel and shell resources. The existing policies, procedures, consultations and monitoring requirements for the noncompetitive use of sand, gravel and shell resources are longstanding and have remained relatively consistent for two decades. If BOEM determines an individual project authorized under this part may have effects on Federally recognized tribes or any Alaska Native Corporation, BOEM will initiate consultation as soon as possible consistent with E.O. 13175 and DOI tribal consultation policies. A tribe may also request BOEM initiate consultation pursuant to E.O. 13175.

Paperwork Reduction Act (PRA) of 1995

This proposed rule contains a new collection of information request that is being submitted to OMB for review and approval under 44 U.S.C. 3501 *et seq.* The rule proposes to add a new part 583 to address the use of OCS sand, gravel and shell resources for shore protection or replenishment, wetland restoration, or qualified construction projects. This part describes the negotiated noncompetitive agreement process for qualifying projects and would codify procedures. The title of the IC request is 30 CFR 583, Negotiated Noncompetitive Leasing for the Use of Sand, Gravel and Shell Resources on the OCS.

Respondents that would be required to submit information under this part are other Federal, State, and local government agencies; corporations; and individual entities. Responses would primarily be required in order to obtain or retain a benefit. The frequency of response would vary depending on the requirement. BOEM would protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2). BOEM proposes to collect the information under this part to evaluate applications for leases/agreements to access sand, gravel or shell resources on the OCS; to balance multiple uses of the OCS; and to monitor activities for environmental protection and safety.

The following table provides a breakdown of the IC requirements and burdens in this proposed part.

BURDEN TABLE

Citation 30 CFR 583 Subpart A	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
Subpart A – General – Federal, State, & local governments				
105	Apply for reconsideration/appeal to the BOEM Director/IBLA within 15 days of notification; include statement of reasons; 1 copy to program office.	2	1	2
Subpart A – General – Corporations				
105	Apply for reconsideration/appeal to the BOEM Director/IBLA within 15 days of notification; include	2	1	2

	statement of reasons; 1 copy to program office.			
Subpart A – General – Individuals				
105	Apply for reconsideration/appeal to the BOEM Director/IBLA within 15 days of notification; include statement of reasons; 1 copy to program office.	2	1	2
Total Subpart A			3 Response	6 Hours
Citation 30 CFR 583 Subpart C	Reporting and Recordkeeping Requirement	Hour Burden	Average No. of Annual Responses	Annual Burden Hours
Subpart C – OCS Sand, Gravel, & Shell Resources Negotiated Agreements - State & local governments				
300	Submit to BOEM a written request to obtain agreement; including, but not limited to: detailed description of project; maps (geographic coordinates); G&G data; description/documentation of environmental evaluations; target dates; description of parties involved; required permits (status of/potential conflicts); points of contact info. for all parties involved; statement of funding.	10	4	40
301; 302(d)	Submit additional information as requested by BOEM.	5	1	5
303(b);	Request that the BOEM Director reconsider a disapproved agreement;	Burden covered under 30 CFR Subpart A		2
303(c)-(e)	Review and comment on draft agreement; sign and return copies for execution by BOEM.	8	3	24
307(a)	Submit written notification to BOEM once resources authorized are obtained.	1	1	1
308	Verify all applicants comply with 2 CFR 180 & 2 CFR 1400 in contract/transaction.	2	1	2
309	Submit written request to extend, modify, or change agreement to BOEM within 180 days before expiration; submit any other documentation requested by BOEM; sign and return amendment; request that the BOEM Director reconsider a disapproved request to extend, modify, or change.	2	2	4
309(b)	Submit written request for letter amendment.	1	1	1
Subpart C – OCS Sand, Gravel, & Shell Resources Negotiated Agreements - Corporations				
300	Submit to BOEM a written request to obtain agreement; including, but not limited to: detailed description of project; maps (geographic coordinates); G&G data; description/documentation of environmental evaluations; target dates; description of parties involved; required permits (status of/potential conflicts); points of contact info. for all parties involved; statement of funding.	10	4	40
301; 302(d)	Submit additional information as requested by BOEM.	5	1	5
303(b);	Request that the BOEM Director reconsider a disapproved agreement;	Burden covered under 30 CFR Subpart A		2
303(c)-(e)	Review and comment on draft agreement; sign and return copies for execution by BOEM.	8	3	24
307(a)	Submit written notification to BOEM once resources authorized are obtained.	1	1	1

308	Verify all applicants comply with 2 CFR 180 & 2 CFR 1400 in contract/transaction.	2	1	2
309	Submit written request to extend, modify, or change agreement to BOEM within 180 days before expiration; submit any other documentation requested by BOEM; sign and return amendment; request that the BOEM Director reconsider a disapproved request to extend, modify, or change.	2	2	4
309(b)	Submit written request for letter amendment.	1	1	1
Subpart C – OCS Sand, Gravel, & Shell Resources Negotiated Agreements - Individuals				
300	Submit to BOEM a written request to obtain agreement; including, but not limited to: detailed description of project; maps (geographic coordinates); G&G data; description/documentation of environmental evaluations; target dates; description of parties involved; required permits (status of/potential conflicts); points of contact info. for all parties involved; statement of funding.	10	4	40
301; 302(d)	Submit additional information as requested by BOEM.	5	1	5
303(b);	Request that the BOEM Director reconsider a disapproved agreement;	Burden covered under 30 CFR Subpart A		2
303(c)-(e)	Review and comment on draft agreement; sign and return copies for execution by BOEM.	8	3	24
307(a)	Submit written notification to BOEM once resources authorized are obtained.	1	1	1
308	Verify all applicants comply with 2 CFR 180 & 2 CFR 1400 in contract/transaction.	2	1	2
309	Submit written request to extend, modify, or change agreement to BOEM within 180 days before expiration; submit any other documentation requested by BOEM; sign and return amendment; request that the BOEM Director reconsider a disapproved request to extend, modify, or change.	2	2	4
309(b)	Submit written request for letter amendment.	1	1	1
Total Subpart C			39 Responses	237 Hours
Grand Total			42 Responses	243 Hours

As part of our continuing effort to reduce paperwork and response burdens, we invite the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. We specifically solicit comments on the following questions:

(1) Is the proposed collection of information necessary for BOEM to properly perform its functions, and will it be useful?

(2) Are the estimates of the burden hours of the proposed collection reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the IC burden on those who must respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) total capital and startup cost component; and (2) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you expect to incur costs. Generally, your estimates should not include equipment or services purchased (1) before October 1, 1995; (2) to comply with requirements not associated with the IC; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 to 60 days after publication of this document in the *Federal Register*. Therefore, a comment to OMB is best assured of having its full effect if OMB receives the comment by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This does not affect the deadline for the public to comment to BOEM on the proposed regulations.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. BOEM has analyzed this rule under the criteria of the NEPA and DOI's NEPA implementing regulations at 43 CFR 46. This rule meets the criteria set forth in 43 CFR 46.210(i) for a Departmental "categorical exclusion" in that this rule is " . . . of an administrative, financial, legal, technical, or procedural nature" We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215.

Information Quality Act (IQA)

In accordance with the IQA, DOI has issued guidance regarding the quality of information that it relies upon for regulatory decisions. This guidance is available at DOI's website at <http://www.doi.gov>.

Send your comments to the U.S. Department of the Interior, Bureau of Ocean Energy Management, Office of Policy, Regulation and Analysis, Attn: IQA Comments, 45600 Woodland Road, VAM-BOEM DIR, Sterling, Virginia 20166.

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of this Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use clear language rather than jargon;
- (d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever helpful.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the "ADDRESSES" section. To better help BOEM revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

List of Subjects 30 CFR 583

Administrative practice and procedure, Beach restoration, Coastal wetlands restoration, Gravel, Government contracts, Intergovernmental relations, Marine minerals, Marine minerals program, Noncompetitive agreements, Negotiated agreements, Outer Continental Shelf, Sand, Shell resources and Shore protection.

Amanda C. Leiter
Acting Assistant Secretary – Land and Minerals Management

March 10, 2016
Dated

For the reasons stated in the preamble, BOEM amends 30 CFR to add part 583 to read as follows:

**PART 583 -- NEGOTIATED NONCOMPETITIVE AGREEMENTS FOR USE OF
OUTER CONTINENTAL SHELF SAND, GRAVEL AND SHELL RESOURCES**

Subpart A - General

Sec.

- 583.100 What is BOEM's authority for information collection (IC)?
- 583.101 What is the purpose of this part and to whom does it apply?
- 583.102 What is BOEM's authority for this part?
- 583.103 What definitions do I need to know?
- 583.104 Who is qualified for a project?
- 583.105 How do I appeal an unfavorable decision by BOEM?
- 583.106 What are the minimum contents of an agreement to use OCS sand, gravel, and shell resources?

Subpart B – [Reserved]

Subpart C - Outer Continental Shelf Sand, Gravel, and Shell Resource Negotiated

Agreements

- 583.300 How do I submit a request for an agreement?
- 583.301 How will BOEM determine if a project qualifies?
- 583.302 What process does BOEM use to technically and environmentally evaluate a qualified project?
- 583.303 What is the process for negotiating and executing an agreement?
- 583.304 What kinds of information must be included in an agreement?
- 583.305 What is the effective date of an agreement?
- 583.306 How will BOEM enforce the agreement?
- 583.307 What is the term of the agreement?
- 583.308 What debarment or suspension obligations apply to transactions and contracts related to a project?
- 583.309 What is the process for modifying the agreement?
- 583.310 When can the agreement be terminated?

Authority: 43 U.S.C. 1334

Subpart A – General

§ 583.100 What is BOEM’s authority for information collection (IC)?

The information collection requirements contained in the new part 583 have been approved by the OMB under 44 U.S.C. 3501 and assigned clearance number **1010-XXXX**. The information is being collected to determine if the applicant for a negotiated noncompetitive agreement (agreement) for the use of sand, gravel and shell resources on the Outer Continental Shelf (OCS) is qualified to enter into such an agreement and to determine if the requested action is warranted. Applicants and parties to the agreement are required to respond to requests related to information collection activities.

§ 583.101 What is the purpose of this part and to whom does it apply?

The regulations in this part provide procedures for a negotiated noncompetitive program for utilization of OCS sand, gravel and shell resources. The rules of this part apply exclusively to negotiated noncompetitive use of OCS sand, gravel and shell resources and do not apply to competitive leasing of minerals, including oil, gas, sulphur, geopressured-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from “public lands” as defined in section 103 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*).

§ 583. 102 What is BOEM’s authority for this part?

(a) Pursuant to authority granted by the Outer Continental Shelf Lands Act (OSCLA, or the Act), as amended (43 U.S.C. 1331 *et seq.*), the Secretary has authority to negotiate an agreement for the use of OCS sand, gravel and shell resources:

(1) For use in a program of, or project for, shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency; or

(2) For use in a construction project, other than a project described in paragraph (1), that is funded in whole or in part by or authorized by the Federal Government.

(b) The Secretary has authorized BOEM to administer the negotiated noncompetitive agreement provisions of the Act and prescribe the rules and regulations necessary to carry out those provisions.

§ 583. 103 What definitions do I need to know?

When used in this part, the following terms will have the meaning given below:

Act means the OCSLA, as amended (43 U.S.C 1331 *et seq.*).

Agreement means a negotiated noncompetitive agreement that authorizes a person to use OCS sand, gravel and shell resources in a program of or project for shore protection, beach restoration or coastal wetlands restoration undertaken by one or more Federal, State or local government agencies, or in a construction project, authorized by, or funded in whole or in part by the Federal government. The form of the agreement will be a Memorandum of Agreement (if one or more of the parties to the agreement, other than BOEM, is a Federal government agency) or a lease (if all of the parties to the agreement other than BOEM are non-Federal agencies or persons).

Amendment means a modification to the agreement between BOEM and the parties to the agreement that extends, modifies or changes the terms of the agreement.

Applicant means any person proposing to use OCS sand, gravel and shell resources for a shore protection, beach restoration or coastal wetlands restoration project undertaken by a Federal, State, or local government agency, or construction project, authorized by, or funded in whole or in part by the Federal government. If multiple persons or Federal, State, or local governments, other than BOEM, partner on a project they will be considered joint applicants.

BOEM means the Bureau of Ocean Energy Management of the U.S. Department of the Interior (DOI).

Borrow area means the offshore geographic area(s) or region(s) where OCS sand, gravel and shell resources have been identified for potential use in a specific project.

Director means the Director of BOEM of the DOI, or an official authorized to act on the Director's behalf.

Federal agency means any department, agency, or instrumentality of the United States.

Local government means the governing authority at the county or city level with jurisdiction to administer a particular project(s).

Modification means the process whereby parties to an agreement and BOEM mutually agree to change, alter or amend the existing agreement.

Outer continental shelf (OCS) is defined in the same way it is defined in Section 2(a) (43 U.S.C. 1331(a)) of the OCSLA, as amended (43 U.S.C. 1331 *et seq.*).

Placement area means the geographic area in which OCS sand, gravel and shell resources, used by agreement, will be placed pursuant to that agreement.

Program means a group of related projects that may be the subject of a negotiated noncompetitive agreement for the use of OCS sand, gravel and shell resources.

Project means an undertaking that may be the subject of a negotiated noncompetitive agreement for the use of OCS sand, gravel and shell resources.

Regional Director means the BOEM officer with responsibility and authority for a Region of the United States.

Secretary refers to the Secretary of the Interior.

§ 583. 104 Who is qualified for a project?

(a) BOEM may enter into an agreement with any person proposing to use OCS sand, gravel and shell resources for a program of or project for shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency or in a construction project that is funded in whole or in part by or authorized by the Federal government.

(b) To qualify for an agreement under this part, the applicant must be:

(1) A Federal, State, or local government agency;

(2) A citizen or national of the United States;

(3) An alien lawfully admitted for permanent residence in the United States, as defined in the Immigration and Nationality Act, as amended (8 U.S.C. 1101 (a)(20));

(4) A private or public corporation organized under the laws of the United States or of any State or territory thereof; or

(5) An association of such citizens, nationals, resident aliens or private or public corporations.

(c) When entering into an agreement under this part, all applicants are subject to the requirements of 2 CFR part 180 and 2 CFR part 1400.

§ 583. 105 How do I appeal an unfavorable decision by BOEM?

(a) After being notified of disqualification, or disapproval of an agreement or modification, an unsuccessful applicant, or adversely affected party to an agreement, may apply for reconsideration by the Director.

(1) All applications for reconsideration by the Director must be submitted within 15 days of being notified of disqualification, or disapproval of an agreement or modification, accompanied

by a statement of reasons for the requested reconsideration, with one copy to the program office whose decision is the subject of the reconsideration.

(2) The Director will respond in writing within 30 days.

(b) No additional appeal rights are available under 30 CFR part 590 and 43 CFR part 4, subpart E.

§ 583.106 What are the minimum contents of an agreement to use OCS sand, gravel, and shell resources?

Any use of OCS sand, gravel and shell resources in an agreement will be negotiated on a case-by-case basis. The agreement will specify, at a minimum, who may use the OCS sand, gravel and shell resources; the nature of the rights granted; and the location, type, and volume of OCS sand, gravel and shell resources. Any authorization to use OCS sand, gravel and shell resources identified in an agreement is not exclusive; BOEM may allow other entities to use OCS sand, gravel and shell resource from the same borrow area.

Subpart B - [Reserved]

Subpart C - Outer Continental Shelf Sand, Gravel, and Shell Resources Negotiated Agreements

§ 583.300 How do I submit a request for an agreement?

Any person may submit a written request to BOEM to obtain an agreement for the use of OCS sand, gravel and shell resources for use in a program of or project for shore protection, beach restoration, or coastal wetlands restoration undertaken by a Federal, State, or local government agency, or in a construction project that is funded in whole or in part by or authorized by the Federal Government. The written request must include:

(a) A detailed description of the proposed project for which the OCS sand, gravel and shell resources will be used and how it qualifies as a program or project eligible under the Act to use OCS sand, gravel or shell resources;

(b) A description of the proposed borrow area(s) and placement area(s), along with maps with geographic coordinates depicting the location of the desired borrow area(s), the OCS block number(s), OCS Planning Area(s), OCS Protraction Diagram Designation(s), and the placement area(s). These should include:

(1) A detailed set of hardcopy maps with coordinates and navigation features of the desired OCS project area (including borrow area and other project features); and

(2) Digital geo-referenced spatial and tabular data depicting the borrow area with features, such as geological sampling locations and any hard or live-bottom benthic habitat present;

(c) Any available geological and geophysical data used to select, design, and delineate the borrow area(s) and potential borrow areas considered but not selected for final design in digital format, geo-referenced where relevant. These may include:

(1) Sediment sampling (sediment cores and grab samples) data such as physical description sheets, photographs, core locations, and grain size analysis; and

(2) Geophysical data such as subbottom profiler, marine magnetometer, and side-scan sonar data, and bathymetry including geo-referenced navigation survey tracklines, shotpoints, and/or timestamps;

(d) Any other uses of the OCS in the borrow area that are known to the applicant at the time of application submittal;

(e) A description of the environmental evaluations and corresponding documents that have been completed or are being prepared, that cover all offshore and onshore components of the project, as applicable;

(f) A target date or date range when the OCS sand, gravel and shell resources will be needed;

(g) A description of the person or government entities undertaking the project;

(h) A list of any permits, licenses or authorizations required for the project and their current status;

(i) A description of any potential inconsistencies with state coastal zone management plans and/or any other applicable state and local statutes, regulations or ordinances;

(j) The name, title, telephone number, mailing address and email address of any points of contact for any Federal agencies, State or local governments, and contractor(s) with whom the applicant has contracted or intends to contract;

(k) A statement explaining who authorized the project and how the project is to be funded, indicating whether the project is Federally funded, in whole or in part, and whether the project is authorized by the Federal government; and

(l) For any other Federal, State or local government agency identified in the application, the name, title, mailing address, telephone number, and email address of both a primary and a secondary point of contact for the agency.

§ 583.301 How will BOEM determine if a project qualifies?

BOEM will make a determination as to whether the project, as described in section 583.300, qualifies for use of OCS sand, gravel and shell resources under the Act. Within 15 business days of receipt of the application, BOEM will determine if the application is complete or will request additional information. After it has determined the application is complete, BOEM will begin

the application review process and notify the applicant in writing whether the project qualifies for an agreement. In determining whether a project qualifies for an agreement, BOEM will consider, among other criteria, the following:

- (a) The project purpose;
- (b) Other uses of OCS sand, gravel and shell resources from the same borrow area that are currently or were previously authorized by BOEM for other projects or programs, including the location, type and volume of such resources;
- (c) The project funding source(s) and amounts;
- (d) The proposed design and feasibility of the project;
- (e) Any potential environmental and safety risks;
- (f) Other Federal interests located near or within the specified borrow area;
- (g) Comments received from potentially affected State or local governments, if any;
- (h) The applicant's background and experience working on similar projects or activities;
- (i) Whether the project operations can be conducted in a manner that protects the environment and promotes orderly development of OCS mineral resources;
- (j) Whether activities can be conducted in a manner that does not pose a threat of serious harm or damage to, or waste of, any natural resource, any life (including fish and other aquatic life), property, or the marine, coastal, or human environment; and
- (k) Whether the project is consistent with the requirements of applicable statutes and their implementing regulations, which may include, but are not limited to, the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*), the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*), the Marine Debris Research, Prevention, and Reduction Act (MDRPRA) (33 U.S.C. 1951 *et seq.*), the Marine Plastic Pollution Research and Control Act (MPPRCA) (33 U.S.C. 1901 *et*

seq.), the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1381 *et seq.*), and the International Convention for the Prevention of Pollution from Ships (MARPOL), MARPOL-Annex V Treaty.

§ 583.302 What process does BOEM use to technically and environmentally evaluate a qualified project?

(a) Once BOEM has determined a project qualifies for an agreement, BOEM will begin the project evaluation process to decide whether to enter into a negotiated noncompetitive agreement.

(b) BOEM will coordinate with relevant Federal agencies, State, and local governments and any potentially affected federally recognized Indian Tribes in the project evaluation.

(c) BOEM will evaluate the project and additional information provided pursuant to sections 30 CFR 583.300 and 583.301, to determine if the information is sufficient to conduct necessary technical and environmental reviews to comply with the requirements of applicable statutes and regulations, which may include, but are not limited to: OCSLA (43 U.S.C. 1331 *et seq.*), the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), the ESA (16 U.S.C. 1531 *et seq.*), the MMPA (16 U.S.C. 1361 *et seq.*), the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 U.S.C. 1801 *et seq.*), the National Historic Preservation Act (NHPA) (54 U.S.C. 300101 *et seq.*), and the Coastal Zone Management Act (CZMA) (16 U.S.C. 1451 *et seq.*).

(d) BOEM will not enter into a negotiated noncompetitive agreement with the applicant until information requested for the evaluation has been provided and evaluated.

§ 583.303 What is the process for negotiating and executing an agreement?

(a) Upon completion of the technical, environmental and other evaluations established in 30 CFR 583.301 and 30 CFR 583.302, BOEM will decide whether to enter into a negotiated noncompetitive agreement with the applicant for use of OCS sand, gravel or shell resources for its proposed project.

(b) If BOEM decides not to enter into such an agreement, BOEM will inform the applicant of its reasons for not doing so. An applicant may ask the BOEM Director for reconsideration in accordance with 30 CFR 583.105(a).

(c) If BOEM has decided to enter into a negotiated noncompetitive agreement with the applicant, BOEM will negotiate the terms and conditions of the agreement with the applicant and prepare a draft agreement for the applicant's review.

(d) After considering comments and suggestions from the applicant, BOEM, at its discretion, may finalize the agreement and distribute it to the applicant for signature.

(e) Upon receipt of the agreement with the applicant's signature, BOEM will execute the agreement. A copy of the executed agreement will be mailed to the parties.

§ 583.304 What kinds of information must be included in an agreement?

Every agreement is negotiated on a case-by-case basis, but at a minimum, must include:

- (a) An agreement number, as assigned by BOEM;
- (b) The purpose of and authorities for the agreement;
- (c) Designated and delineated borrow area(s);
- (d) A project description, including the timeframe within which the project is to be started and completed;
- (e) The terms and conditions of the agreement, including any reporting requirements;
- (f) All obligations of the parties; and

(g) The signatures of appropriate individuals authorized to bind the applicant and BOEM.

§ 583.305 What is the effective date of an agreement?

The agreement will become effective on the date when all parties to the agreement have signed it.

§ 583.306 How will BOEM enforce the agreement?

(a) Failure to comply with any applicable law or any provision, term, or condition of the agreement may result in the termination of the agreement and/or a referral to an appropriate Federal and/or State agency/agencies for enforcement. Termination of the agreement for noncompliance will be in the sole discretion of the Director.

(b) The failure to comply in a timely and satisfactory manner with any provision, term or condition of the agreement may delay or prevent BOEM's approval of future requests for use of OCS sand, gravel and shell resources on the part of the parties to the agreement.

§ 583.307 What is the term of the agreement?

(a) An agreement will terminate upon the following, whichever occurs first:

(1) The agreement expires by its own terms, unless the term is extended prior to expiration under § 583.309;

(2) The project is terminated, as set forth in § 583.310; or

(3) A party to the agreement notifies BOEM, in writing, that sufficient OCS sand, gravel and shell resources, up to the amount authorized in the agreement, have been obtained to complete the project.

(b) Absent extraordinary circumstances, no agreement will be for a term longer than 5 years from its effective date.

§ 583.308 What debarment or suspension obligations apply to transactions and contracts related to a project?

The parties to an agreement must ensure that all contracts and transactions related to an agreement issued under this part comply with 2 CFR part 180 and 2 CFR part 1400.

§ 583.309 What is the process for modifying the agreement?

(a) Unless otherwise provided for in the agreement, the parties to the agreement may submit to BOEM a written request to extend, modify, or change an agreement. BOEM is under no obligation to extend an agreement and cannot be held liable for the consequences of the expiration of an agreement. With the exception of paragraph (b) of this section, any such requests must be made at least 180 days before the term of the agreement expires. BOEM will respond to the request for modification within 30 days of receipt and request any necessary information and evaluations to comply with 30 CFR 583.301. BOEM may approve the request, disapprove it, or approve it with modifications subject to the requirements of 30 CFR 583.301.

(1) If BOEM approves a request to extend, modify or change an agreement, BOEM will draft an agreement modification for review by the parties to the agreement in the form of an amendment to the original agreement. The amendment will include:

- (i) The agreement number, as assigned by BOEM;
- (ii) The modification(s) agreed to;
- (iii) Any additional mitigation required; and
- (iv) The signatures of the parties to the agreement and BOEM.

(2) If BOEM disapproves a request to extend, modify, or change an agreement, BOEM will inform the parties to the agreement of the reasons in writing. Parties to the agreement may ask the BOEM Director for reconsideration in accordance with 30 CFR 583.105.

(b) By written request, for strictly minor modifications that do not change the substance of the project or the analyzed environmental effects of the project, including but not limited to, the change of a business address, the substitution of a different Federal, State or local government agency contact, or an extension of less than 30 days, parties to the agreement may memorialize the minor modification in a letter from BOEM to the parties indicating the request has been granted.

§583.310 When can the agreement be terminated?

(a) The Director will terminate any agreement issued under this part upon proof that it was obtained by fraud or misrepresentation, after notice and an opportunity to be heard has been afforded to the parties of the agreement.

(b) The Director may immediately suspend and subsequently terminate any agreement issued under this part when:

- (1) There is noncompliance with the agreement, pursuant to 30 CFR 583.306(a); or
- (2) It is necessary for reasons of national security or defense; or
- (3) The Director determines that:

(i) Continued activity under the agreement would cause serious harm or damage to natural resources; life (including human and wildlife); property; the marine, coastal, or human environment; or sites, structures, or objects of historical or archaeological significance;

(ii) The threat of harm or damage will not disappear or decrease to an acceptable extent within a reasonable period of time; and

- (iii) The advantages of termination outweigh the advantages of continuing the agreement.

(c) The Director will immediately notify the parties to the agreement of the suspension or termination. The Director will also mail a letter to the parties to the agreement at their record post office address with notice of any suspension or termination and the cause for such action.

(d) In the event that BOEM terminates an agreement under this section, none of the parties to the agreement will be entitled to compensation as a result of expenses or lost revenues that may result from the termination.

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